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PTO/SB/21 (09-04)

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2340 \$

	Application Number	09/945,471
	Filing Date	August 30, 2001
	First Named Inventor	Petersen
	Art Unit	3763
	Examiner Name	Catherine S. Williams
Total Number of Pages in This Submission		Attorney Docket Number 011738.00029

ENCLOSURES (check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) ____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Fax Coversheet Application For Patent Term Adjustment Exhibits 1- 6
Remarks The Commissioner is authorized to charge any fees in connection with this correspondence to Deposit Account No. 19-0733.		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm	Banner & Witcoff, LTD.		
Signature			
Printed Name	William J. Allen		
Date	June 16, 2005	Reg. No.	51,393

CERTIFICATE OF TRANSMISSION/MAILING			
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.			
Signature			
Typed or printed name		Date	June 16, 2005

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Effective on 12/08/2004. Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818). FEE TRANSMITTAL for FY 2005 JUN 16 2005 <input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27		Complete If Known Application Number: 09/945,471 Filing Date: August 30, 2001 First Named Inventor: Petersen Examiner Name: Catherine S. Williams Art Unit: 3763 Attorney Docket No.: 011738.00029	
TOTAL AMOUNT OF PAYMENT (\$) 200.00			

METHOD OF PAYMENT (check all that apply)

- ☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify) : _____
☒ Deposit Account Deposit Account Number: 19-0733 Deposit Account Name: Banner & Witcoff, LTD.
 For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)
☒ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee
☒ Charge any additional fee(s) or underpayments of fee(s) ☒ Credit any overpayments
 Under 37 CFR 1.16 and 1.17

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	_____
Design	200	100	100	50	130	65	_____
Plant	200	100	300	150	160	80	_____
Reissue	300	150	500	250	600	300	_____
Provisional	200	100	0	0	0	0	_____

2. EXCESS CLAIM FEES

<u>Fee Description</u>				<u>Fee (\$)</u>	<u>Fee (\$)</u>
Each claim over 20 (including Reissues)				50	25
Each independent claim over 3 (including Reissues)				200	100
Multiple dependent claims				360	180
<u>Total Claims</u>	<u>Extra Claims</u>	<u>Fee(\$)</u>	<u>Fee Paid (\$)</u>	<u>Multiple Dependent Claims</u>	
_____ - 20 or HP= _____	x _____	= _____	_____	<u>Fee (\$)</u>	<u>Fee Paid (\$)</u>
HP = highest number of total claims paid for, if greater than 20.					
<u>Indep. Claims</u>	<u>Extra Claims</u>	<u>Fee(\$)</u>	<u>Fee Paid (\$)</u>		
_____ - 3 or HP= _____	x _____	= _____	_____		
HP = highest number of independent claims paid for, if greater than 3.					

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
_____ - 100 = _____	/ 50 = _____	(round up to a whole number) x _____		= _____

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)
 Other (e.g., late filing surcharge): Application for Patent Term Adjustment under 37 CFR § 1.18(e) \$200.00

SUBMITTED BY

Signature	<i>William J. Allen</i> 51,393	Registration No. (Attorney/Agent)	51,393	Telephone	312.463.5000
Name (Print/Type)	William J. Allen			Date	June 16, 2005

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Attorney Docket No. 011738.00029)

In re U.S. Patent Application of : Petersen)
) Group Art Unit: 3763
Application No. 09/945,471)
) Examiner: Catherine S. Williams
Filed: August 30, 2001)
) Confirmation No. 3237
For: Method for Convection Enhanced)
Delivery Catheter to Treat Brain and)
Other Tumors)

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C. F. R. § 1.705(b)

MS: Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant respectfully applies for reconsideration under 35 U.S.C. § 154 (b) and 37 C.F.R. 1.705(b) of the patent term adjustment indicated in the notice of Determination of Patent Term Adjustment ("Notice") mailed March 23, 2003, in the above-captioned application. The Notice set the term adjustment at 60 days. However, Applicant respectfully submits that such a determination is not correct and that the proper term adjustment is 125 days.

The Commissioner is authorized to charge the requisite fee pursuant to 37 C.F. R. 1.18(e) to deposit account 19-0733. A statement of facts begins on page 2 of this filing.

06/20/2005 MBERHE1 00000083 190733 09945471

01 FC:1455 200.00 DA

Statement of Facts:

1. Applicants filed application serial number 09/945,471 on August 30, 2001. See exhibit 1, which is a copy of the official filing receipt.
2. A first non-final Office Action was mailed (June 4, 2003) 217 days after expiration of the 14 month time period for mailing a notice under 35 U.S.C. § 132 set forth in 35 U.S.C. § 154(b)(1)(A)(i)(I) and 37 C.F.R. §1.702(a)(1). Applicant agrees with the Patent Office's account of 217 days. See exhibit 2, which is a copy of the first non-final Office Action.
3. Applicant replied to the first non-final Office Action on October 6, 2003. Applicant agrees with the Patent Office's account of 32 days delay between the first non-final Office Action and Applicant's response to the first non-final Office Action.
4. A second non-final Office Action was mailed on January 15, 2004. See exhibit 3, which is a copy of the second non-final Office Action.
5. Applicant replied to the second non-final Office Action on May 13, 2004. Applicant agrees with the Patent Office's account of 28 days delay between the second non-final Office Action and Applicant's response to the second non-final Office Action.
6. A third non-final Office Action was mailed on August 11, 2004. See exhibit 4, which is a copy of the third non-final Office Action.
7. Applicant replied to the third non-final Office Action on December 13, 2004. Applicant agrees with the Patent Office's account of 32 days delay between the third non-final Office Action and Applicant's response to the third non-final Office Action.
8. William J. Allen, Reg. No. 51,393, attorney for Applicant, spoke with Examiner Catherine S. Williams on February 11, 2005. During that conversation, Examiner Williams stated that the case would be allowed upon the filing of a terminal disclaimer over 09/945,472 (filed August 30, 2001, now U.S. Patent Number 6,893,429, issued May 17, 2005).
9. Prior to the February 11th conversation with Examiner Williams, a terminal disclaimer was not required nor requested to be filed in the application. Nor was a rejection or objection issued in any Patent Office communication for which a terminal disclaimer would be an appropriate response.
10. In response to Examiner Williams statement, a terminal disclaimer was filed on February 16, 2005. Please see exhibit 5, which is a copy of the terminal disclaimer.

11. The Patent Term Adjustment calculation shows a 65 day delay between Applicant's December 13, 2004 response and the filing of the terminal disclaimer on February 16, 2005. See exhibit 6, which is a copy of the Patent Term Adjustment calculation.

Point To Be Reviewed

According to the original Patent Term Adjustment calculation, the total patent term adjustment is 60 days, but the correct number of days should 125. Applicant respectfully submits that the 65 day delay between Applicant's December 13, 2004 response and the filing of the terminal disclaimer on February 16, 2005 is in error. Applicant submits that the terminal disclaimer was filed on February 16, 2004, only five days after such a requirement was presented to Applicant. Therefore, the total of the APPL days should be 92 days (not 157 days as indicated) bringing the Total PTA to 125 days.

Action Requested

Applicant respectfully requests that this application under 37 CFR § 1.705 (b) be accepted and that 65 days be added to the originally listed patent term adjustment of 60 days that issues from this application. Therefore, above-mentioned application should receive a patent term adjustment of 125 days.

Date: June 16, 2005

Respectfully submitted,

By: William J. Allen 51,393
William J. Allen
Registration No. 51,393
BANNER & WITCOFF, LTD.
10 South Wacker Drive
Suite 3000
Chicago, Illinois 60606
Telephone: 312-463-5000
Fax: 312-463-5001



UNITED STATES PATENT AND TRADEMARK OFFICE

JUN 16 2005

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

APPLICATION NUMBER	FILING DATE	GRP ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO	DRAWINGS	TOT CLAIMS	IND CLAIMS
09/945,471	08/30/2001	3763	1382	11738.00029	5	44	6

CONFIRMATION NO. 3237

22908
BANNER & WITCOFF, LTD.
TEN SOUTH WACKER DRIVE
SUITE 3000
CHICAGO, IL 60606

FILING RECEIPT



OC000000006844560

Date Mailed: 10/04/2001

Receipt is acknowledged of this nonprovisional Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Customer Service Center. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).

Applicant(s)

Daryle Lee Petersen, Eagan, MN;

Domestic Priority data as claimed by applicant

Foreign Applications

If Required, Foreign Filing License Granted 10/03/2001

Projected Publication Date: 03/06/2003

Non-Publication Request: No

Early Publication Request: No

RECEIVED
DOCKETJVM
OCT 10 2001
11738.00029
BANNER & WITCOFF, LTD.

JAN

Title

Method for convection enhanced delivery catheter to treat brain and other tumors

Preliminary Class

604

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Office of Export Administration, Department of Commerce (15 CFR 370.10 (j)); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,471	08/30/2001	Daryle Lee Petersen	11738.00029	3237

22908 7590 06/04/2003

BANNER & WITCOFF, LTD.
TEN SOUTH WACKER DRIVE
SUITE 3000
CHICAGO, IL 60606

RECEIVED

JUN 1 1 2003

BANNER & WITCOFF
DOCKETING DEPT.

EXAMINER

SERKE, CATHERINE

ART UNIT

PAPER NUMBER

3763

DATE MAILED: 06/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

011738.00029
DOCKETED
Amend. Due:
JUN 11 2003

9/4/03

12/4/03: CTS & Py

Office Action Summary

Application No.

09/945,471

Applicant(s)

PETERSEN, DARYLE LEE

Examiner

Catherine Serke

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 16, 19-38, 43 and 44 is/are rejected.
- 7) ☒ Claim(s) 15, 17, 18 and 39-42 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 and 21-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the diffusion section" in line 6. There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites the limitation "the diffusion section" in line 6. There is insufficient antecedent basis for this limitation in the claim.

Claim 21 recites the limitation "the diffusion section" in line 9. There is insufficient antecedent basis for this limitation in the claim.

Claim 28 recites the limitation "the diffusion section" in line 8. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3763

Claims 1-14,16,19-20,35-38 and 43-44 are rejected under 35 U.S.C. 102(b) as being anticipated by Ward (US Pat#s 5,713,923 and 5,978,702).

Ward discloses techniques of treating epilepsy that include identifying the site, selecting at least one or two catheters with a microporous section, placing the catheters in the organism, coupling the catheters to a pump, and actuating the pump. See figures 1 and 6. Each end of the microporous sections is connected to an end of a solid catheter section. See figure 6. This results in a solid cross section through any part of the distal region. The sold tube may be made from a radiopaque material. The pump may be implantable or external.

Allowable Subject Matter

Claims 15, 17-18 and 39-42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 21-34 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine Serke whose telephone number is 703-308-4846. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552. The fax phone numbers for the

Art Unit: 3763

organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2192.

Catherine Serke *CS.*
June 2, 2003

BRIAN L. CASLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

Notice of References Cited

Application/Control No.

09/945,471

Applicant(s)/Patent Under
Reexamination
PETERSEN, DARYLE LEE

Examiner

Catherine Serke

Art Unit

3763

Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-5,978,702	11-1999	Ward et al.	607/3
	B	US-5,713,923	02-1998	Ward et al.	607/3
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

#2

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

Substitute for form 1449A/PTO

INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(use as many sheets as necessary)

Sheet	1	of	2
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Complete if Known

Application Number	09/945,471
Filing Date	August 30, 2001
First Named Inventor	Daryle Lee Petersen
Group Art Unit	3763
Examiner Name	n/a
Attorney Docket Number	11738.00029

U.S. PATENT DOCUMENTS

[illegible]

FOREIGN PATENT DOCUMENTS

[illegible]

**Examiner
Signature**

Date Considered

5/31/03

EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

¹ Unique citation designation number. ² See attached Kinds of U.S. Patent Documents. ³ Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). ⁴ For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. ⁵ Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST. 16 if possible. ⁶ Applicant is to place a check mark here if English language Translation is attached.

Burden Hour Statement: This form is estimated to take 2.0 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. **DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO:** Assistant Commissioner for Patents, Washington, DC 20231.



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,471	08/30/2001	Daryle Lee Petersen	11738.00029	3237

22908 7590 01/15/2004

BANNER & WITCOFF, LTD.
TEN SOUTH WACKER DRIVE
SUITE 3000
CHICAGO, IL 60606

EXAMINER

WILLIAMS, CATHERINE SERKE

ART UNIT

PAPER NUMBER

3763

DATE MAILED: 01/15/2004

RECEIVED

JAN 20 2004

BANNER & WITCOFF
DOCKETING DEPT.

Please find below and/or attached an Office communication concerning this application or proceeding.

011738.00029

DOCKETED *hku*

3 month office action

JAN 21 2004

response due 4/15/2004

Last day to respond 7/15/2004

Office Action Summary

Application No.

09/945,471

Applicant

PETERSEN, DARYLE LEE

Examiner

Catherine S. Williams

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-5, 7-10, 15, 17, 19-34 and 39-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21-27 and 39-54 is/are allowed.
- 6) ☒ Claim(s) 2-5, 7-10, 15, 17, 19-20 and 28-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

The indication of allowable subject matter with regard to claims 15 and 17-18 has been withdrawn. A new rejection on the merits to those claims appears below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 15, 17, 20, 28, 30-32 and 34 are rejected under 35 U.S.C. 102(e) as being anticipated by Massengale (US Pat# 6,626,885).

Massengale discloses a catheter for uniform delivery of medication that includes either expressly or inherently the method steps of identifying the selected sites for delivering the therapeutic agent; selecting a catheter having a tubular section, the tubular section including a solid section and at least two diffusion sections (figure 6; three sections each including a port #356), the at least two diffusion sections longitudinally aligned from a distal end corresponding to the selected sites (see figure 16; longitudinal arrangement of three ports #356); and placing the catheter in the organism so that the at least two diffusion sections are placed at the selected sites. The tubular section further includes an outer wall and an inner wall, the outer wall having at least one opening (see figure 16; #356) within each of the at least two diffusion sections through to the inner tubular wall, the inner tubular wall lined with a microporous membrane (see figure 16). As

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shown in figure 16, the outer surface of the microporous membrane has a interference fit with the inner surface of the tubular wall. The catheter is connected to a pump.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ward (US Pat#s 5,713,923 and 5,978,702) in view of Elsberry (US Pat# 6,093,180).

Ward discloses techniques of treating epilepsy that include identifying the site (see 3:20-24), selecting at least one or two catheters with a microporous section (see 4:49-51), placing the catheters in the organism, coupling the catheters to a pump, and actuating the pump. See figures 1 and 6. Each end of the microporous sections is connected to an end of a solid catheter section. See figure 6. This would result in a solid cross section through any part of the distal region. The solid tube may be made from a radiopaque material (see 4:32-36). The pump may be implantable (see 4:46-48).

Ward fails to disclose a solid catheter tip. However, Elsberry which is incorporated by reference into both Ward patents discloses a solid catheter tip. A radiopaque marker tip (46) is shown in figure 4. The rounded surface (46) of the tip provides a profile for minimizing tissue disruptions during insertion.

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At the time of the invention, it would have been obvious to incorporate the rounded solid tip of Elsberry into the invention of Ward. All three devices are analogous in the art and with the claimed invention; therefore, a combination is proper. Additionally, both Ward references incorporate by reference the Elsberry patent. Finally, the motivation for the incorporation would have been to provide the device of Ward with a rounded distal tip to minimize tissue disruptions during insertion in order to enhance the safety of the patient.

Claims 5 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ward (US Pat#s 5,713,923 and 5,978,702) in view of Elsberry (US Pat# 6,093,180).

Ward in view of Elsberry meets the claim limitations as described above but fails to include an external pump.

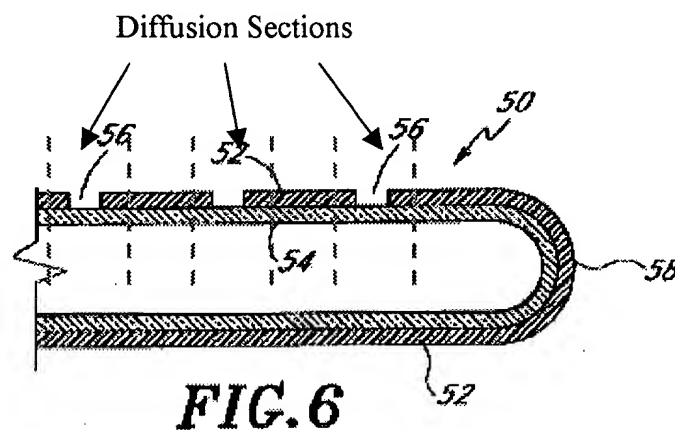
At the time of the invention, it would have been obvious to substitute the implantable pump with an external pump. Indwelling catheters with external pumps are well known in the art and are used in applications that require a large amount of fluid/drug infusions. The motivation for substituting an external pump would have been in order to broaden the application of the device to patients who require large volumes of drug infusion.

Claims 15, 17, 20, 28, 30-32, 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deniega et al (US Pat# 6,350,253).

Deniega discloses a catheter for uniform delivery of medication that includes either expressly or inherently the method steps of identifying the selected sites for delivering the therapeutic agent (see 6:25; wound area); selecting a catheter having a tubular section, the

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tubular section including a solid section and at least two diffusion sections (figure 6; three sections each including a port #56; see figure below), the at least two diffusion sections longitudinally aligned from a distal end corresponding to the selected sites (see figure 6; longitudinal arrangement of three ports #56); and placing the catheter in the organism so that the at least two diffusion sections are placed at the selected sites (see 4:25-28). The tubular section further includes an outer wall and an inner wall, the outer wall having at least one opening (see figure 6; #56) within each of the at least two diffusion sections through to the inner tubular wall, the inner tubular wall lined with a microporous membrane (see figure 6). As shown in figure 6, the outer surface of the microporous membrane has a interference fit with the inner surface of the tubular wall. The catheter is connected to a fluid reservoir (34) for both low and high pressure fluid delivery (see 9:60-63).



Deniega fails to disclose coupling the catheter to a pump and actuating the pump. At the time of the invention, it would have been obvious to substitute a pump for the fluid reservoir of Deniega. Deniega does disclose that high pressure fluid may be introduced into the catheter and it is well known in the art to use externally placed pumps to create a high pressure fluid flow into

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an indwelling catheter. In order to create a high pressure flow with the device of Deniega, as disclosed, the reservoir would either have to be raised in order to increase the effects of gravity or some external pressure would have to be exerted on the contents of the reservoir, e.g. compressed air. Substituting an externally placed pump would create this high pressure fluid flow (as desired by Deniega; see 3:37-41; 3:54-57 and 9:60-63) without additional manipulation to the reservoir. The motivation to substitute a pump for the reservoir would be an obvious design substitution in order to enhance the performance of the device by using a known part (pump) for the known function of that part (high pressurize fluid flow).

Claims 19 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deniega et al (US Pat# 6,350,253) in view of Ward (US Pat#s 5,713,923 and 5,978,702).

Deniega meets the claim limitations as described above but fails to include an implantable pump. However, Ward, as described above, includes an implantable pump (see 4:46-48).

At the time of the invention, it would have been obvious to substitute an implantable pump for the obvious pump of Deniega (as described above). It is well known in the indwelling catheter art that external pumps are cumbersome for active patients. Implantable pumps connected to indwelling catheters are well known in the art and are commonly used to enable a patient undergoing medical treatment (long term drug infusion) to be mobile. The motivation for substituting an implantable pump as taught by Ward would have been in order to provide a known solution for a known problem in the art.

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Claim 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deniega et al (US Pat# 6,350,253) in view of Ward (US Pat#s 5,713,923 and 5,978,702).

Deniega meets the claim limitations as described above but fails to include an the solid tubular section comprising a radio opaque material. However, Ward, as described above, includes the tubular body having a radiopaque material (see 4:32-36).

At the time of the invention, it would have been obvious to incorporate a radio opaque material in to the tubular body of Deniega. Radio opaque catheters are well known in the art and are used in order to determine if an indwelling catheter is positioned in a desired treatment area of the patient's body. The motivation for incorporating a radio opaque material as taught by Ward would have been in order to increase the safety to the patient from a misplaced catheter.

Allowable Subject Matter

Claims 21-27 and 39-54 are allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine S. Williams whose telephone number is 703-308-4846. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552. The fax phone numbers for the

Art Unit: 3763

organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2192.

Catherine Serke Williams *CSW*.
January 8, 2004

Please type a plus sign (+) inside this box → ☐

PTO/SB/08A (08-00)

Approved for use through 10/31/2002. OMB 0651-0031
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number

Substitute for form 1449A/PTO

INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(use as many sheets as necessary)

Sheet 2 of 2

Complete if Known

Application Number	09/945,471
Filing Date	August 30, 2001
First Named Inventor	Daryle Lee Petersen
Group Art Unit	3763
Examiner Name	n/a
Attorney Docket Number	11738.00029

OTHER PRIOR ART -- NON PATENT LITERATURE DOCUMENTS

Examiner Initials *	Cite No. ¹	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T ²
Ch.		MEDTRONIC, INC., SynchroMed Infusion System, "Optimizing Therapy Through Programmability," 1995 (4 pages)	

Examiner
Signature

Catherine A. Lee

Date
Considered

5/31/03

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

¹ Unique citation designation number. ² Applicant is to place a check mark here if English language Translation is attached.

Burden Hour Statement: This form is estimated to take 2.0 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

Notice of References CitedApplication/Control No.
09/945,471Applicant's Patent Under
Reexamination
PETERSEN, DARYLE LEEExaminer
Catherine S. WilliamsArt Unit
3763

Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-5,978,702	11-1999	Ward et al.	607/3
*	B	US-5,713,923	02-1998	Ward et al.	607/3
	C	US-6,350,253	02-2002	Deniega et al.	604/164.02
	D	US-6,626,885	09-2003	Massengale, Roger Dillard	604/508
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,471	08/30/2001	Daryle Lee Petersen	11738.00029	3237
22908	7590	08/11/2004	EXAMINER	
BANNER & WITCOFF, LTD. TEN SOUTH WACKER DRIVE SUITE 3000 CHICAGO, IL 60606			WILLIAMS, CATHERINE SERKE	
			ART UNIT	PAPER NUMBER
			3763	

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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AUG 16 2004

BANNER & WITCOFF
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011738.00029

DOCKETED *ht*

3 mo office action

AUG 17 2004

response due 11/11/2004
Last day to respond 2/11/2005

Office Action Summary

Application No.

09/945,471

Applicant(s)

PETERSEN, DARYLE LEE

Examiner

Catherine S. Williams

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-5,7-10,21-27 and 39-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-5,7-10,21-27 and 39-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/5/04; 5/13/04</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

The indicated allowability of claims 21-27 and 39-54 is withdrawn in view of the newly discovered reference(s) to Odland (US Pat# 6,030,358) and GB 1567122.

Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 21-27 and 39-54 are rejected under 35 U.S.C. 102(e) as being anticipated by Odland (US Pat# 6,030,358). Odland discloses a microcatheter and method for specific site therapy. The reference teaches two catheters (90); the catheters having a tubular section with a solid section (see figure 7 and 9:30-32) and at least two diffusion sections (43); the two diffusion sections are longitudinally aligned (see figure 7); a manifold (126 see figure 15 and 9:62-10:13); and a pump (10:6). The catheter includes

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an outer tubular wall and an inner tubular wall (42) where the inner tubular wall is lined with a microporous membrane (22). The outer around of the microporous membrane has an interference fit with the inner tubular wall of the outer tubular wall. See figure 4 and 8:7+. The pump is shown as an external pump but may be implantable. See 11:9-11. The catheter may be radioopaque. See 10:29-32.

The claims additionally recite the steps of "identifying the selected sites"; "selecting two catheters"; "placing each catheter in the organism"; "connecting the proximal end of the catheter to a manifold"; and "actuating the pump". While these steps are not recited verbatim in the text of the reference, they are steps that are necessary for carrying out the proper functioning of the prior art device. Without each of these steps being performed, the prior art device as taught cannot be used and function as specified.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-5 and 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Odland in view of GB 1567122. Odland meets the claim limitations as described above but fails to include the tubular section of the catheters having alternating solid and microporous membrane sections with the tubular section having a substantially uniform diameter.

However, '122 discloses a catheter with an alternating solid and microporous sections with a solid distal tip (30). See figure 3. The tip is specified as being closed but is depicted with the same cross hatchings as the solid sections 10 so the tip (30) is also construed as being solid. The design and configuration of the catheter is for ease of insertion into a selected site. See page 2 lines 45-49.

At the time of the invention, it would have been obvious to substitute the catheter arrangement (42 and 22) of Odland with the catheter of '122. Both catheter designs are for ease of insertion into a patient. Additionally, both catheters have a tubular section with solid portions and porous sections for the transfer of fluid. The motivation for the substitution of the '122 catheter into the device of Odland would have been to simplify the catheter design by providing a streamline catheter design (one catheter tube) for the two tube arrangement of Odland.

Conclusion

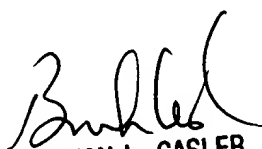
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine S. Williams whose telephone number is 703-308-4846. The examiner can normally be reached on Monday - Friday.

(57) 272-4970 If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3763

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Catherine S. Williams *CSW*
August 9, 2004


BRIAN L. CASLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

MAY 13 2004

PTO/SB/08a (05-03)

Approved for use through 04/30/2003. OMB 0851-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(use as many sheets as necessary)

Sheet	1
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1

of

1

Complete if Known

Application Number

09/945.471

Filing Date

August 30, 2001

First Named Inventor

Daryle Lee Petersen

Art Unit

3763

Examiner Name: _____

Catherine Serke Williams

Attorney Docket Number

011738.00029

U.S. PATENT DOCUMENTS

[illegible]

FOREIGN PATENT DOCUMENTS

[illegible]

**Examiner
Signature**

Catherine S. Williams

Date Considered

8/9/04

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P1 U/SB/08a (05-03)

Notice of References Cited

Application/Control No.

09/945,471

Applica //Patent Under
Reexamination
PETERSEN, DARYLE LEE

Examiner

Catherine S. Williams

Art Unit

3763

Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-6,030,358	02-2000	Odland, Rick Matthew	604/27
	B	US-			
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
*	N	GB 1567122	03-1978	England		
	O					
	P					
	Q					
	R					
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NON-PATENT DOCUMENTS

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REJECTION OVER A PENDING "REFERENCE" APPLICATION**

Docket Number (Optional)
11738.00029

In re Application of: Petersen

Application No. 09/945,471

Filed: August 30, 2001

For: Method for Convection Enhanced Delivery Catheter to Treat Brain and Other Tumors

The owner*, Medtronic, Inc., of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of any patent granted on pending reference Application No. 09/945,472, filed on August 30, 2001, as such term is defined in 35 U.S.C. 154 and 173, and as the term of any patent granted on said reference application may be shortened by any terminal disclaimer filed prior to the grant of any patent on the pending reference application. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and any patent granted on the reference application are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

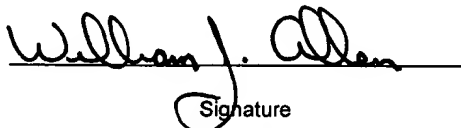
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2. ☒ The undersigned is an attorney of record. Registration No. 51,393.



February 16, 2005

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William J. Allen

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312-463-5000

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TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>	Application Number	09/945,471
	Filing Date	August 30, 2001
	First Named Inventor	Petersen
	Art Unit	3763
	Examiner Name	Williams
Total Number of Pages in This Submission	Attorney Docket Number	011738.00029

ENCLOSURES (check all that apply)		
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Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).**FEE TRANSMITTAL
for FY 2005**☐ Applicant claims small entity status. See 37 CFR 1.27**TOTAL AMOUNT OF PAYMENT** (\$) 130**Complete if Known**

Application Number	09/945,471
Filing Date	August 30, 2001
First Named Inventor	Petersen
Examiner Name	Williams
Art Unit	3763
Attorney Docket No.	11738.00029

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	Fee (\$)	Small Entity Fee(\$)	Fee(\$)	Small Entity Fee(\$)	Fee(\$)	Small Entity Fee(\$)	
Utility	300	150	500	250	200	100	_____
Design	200	100	100	50	130	65	_____
Plant	200	100	300	150	160	80	_____
Reissue	300	150	500	250	600	300	_____
Provisional	200	100	0	0	0	0	_____

2. EXCESS CLAIM FEES**Fee Description**

Each claim over 20 (including Reissues)

Each independent claim over 30 (including Reissues)

Multiple dependent claims

Small Entity	
Fee (\$)	Fee (\$)
50	25
200	100
360	180
Multiple Dependent Claims	
Fee (\$)	Fee Paid (\$)

Total Claims **Extra Claims** **Fee(\$)** **Fee Paid (\$)**

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Indep. Claims **Extra Claims** **Fee(\$)** **Fee Paid (\$)**

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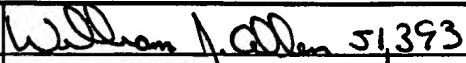
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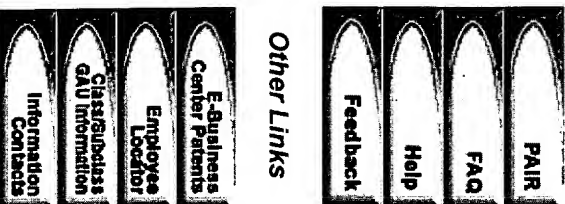


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Patent Term Adjustment (PTA) for application number: 09/945,471

		Days
Filing or 371(c) Date: 08-30-2001	USPTO Delay (PTO):	217
Issue Date of Patent: -	Three Years:	-
Pre-Issue Petitions (days): +0	Applicant Delay (APPL):	157
Post-Issue Petitions (days): +0	Total PTA:	60
USPTO Adjustment (days): +0	Explanation of Calculations	

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Patent Term Adjustment History

Date	Contents Description	PTO (days)	APPL (days)
03-23-2005	Mail Notice of Allowance		
03-21-2005	Issue Revision Completed		
03-21-2005	Notice of Allowance Data Verification Completed		
03-21-2005	Notice of Allowability		
02-16-2005	Terminal Disclaimer Filed		65
03-15-2005	Paralegal TD Accepted		
02-16-2005	Terminal Disclaimer Filed		

01-13-2005	Date Forwarded to Examiner		1
12-13-2004	Response after Non-Final Action		32
12-13-2004	Request for Extension of Time - Granted		1
08-11-2004	Mail Non-Final Rejection		1
08-09-2004	Non-Final Rejection		
05-26-2004	Date Forwarded to Examiner		
05-13-2004	Response after Non-Final Action		28
05-13-2004	Request for Extension of Time - Granted		1
05-13-2004	Information Disclosure Statement (IDS) Filed		1
05-13-2004	Workflow incoming amendment IFW		1
03-24-2004	IFW TSS Processing by Tech Center Complete		1
03-05-2004	Information Disclosure Statement (IDS) Filed		1
01-15-2004	Mail Non-Final Rejection		1
01-12-2004	Non-Final Rejection		
10-21-2003	Date Forwarded to Examiner		
10-06-2003	Response after Non-Final Action		32
10-06-2003	Request for Extension of Time - Granted		1
06-04-2003	Mail Non-Final Rejection	217	1
06-02-2003	Non-Final Rejection	1	
02-25-2003	New or Additional Drawing Filed	1	
12-13-2001	Information Disclosure Statement (IDS) Filed	1	
11-26-2001	Case Docketed to Examiner in GAU	1	
10-04-2001	Application Dispatched from OIPE	1	
10-03-2001	Correspondence Address Change	1	
09-11-2001	IFW Scan & PACR Auto Security Review	1	
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In re: Application No. 09/945,471

Filed 08/30/2001

Title: Method for Convection Enhanced Delivery Catheter to Treat Brain and Other Tumors

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